

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON AGRICULTURE, LIVESTOCK AND IRRIGATION

Call to Order: By **CHAIRMAN REINY JABS**, on February 8, 1999 at
3:10 P.M., in Room 413/415 Capitol.

ROLL CALL

Members Present:

Sen. Reiny Jabs, Chairman (R)
Sen. Walter McNutt, Vice Chairman (R)
Sen. Tom A. Beck (R)
Sen. Gerry Devlin (R)
Sen. Pete Ekegren (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Greg Jergeson (D)
Sen. Ken Mesaros (R)
Sen. Linda Nelson (D)
Sen. Jon Tester (D)

Members Excused: None.

Members Absent: None.

Staff Present: Carol Masolo, Committee Secretary
Doug Sternberg, Legislative Branch

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 221, 2/3/99, SB 342, 2/1/99

Executive Action:

HEARING ON HB 221

Sponsor: REPRESENTATIVE CLIFF TREXLER, HD 59, Hamilton

Proponents: John Youngberg, Montana Farm Bureau, WIFE

Dave Burch, Jefferson Co. Weed Dist.
Bob Stevens, Montana Grain Growers
John Bloomquist, Montana Stock Growers
Ron DeYong, Montana Farmers Bureau
Brian

Opponents: None

Opening Statement by Sponsor:

REPRESENTATIVE CLIFF TREXLER, HD 59, Weeds have become an epidemic in Montana, costing estimates of 160 million dollars a year at this time. Most of us think somebody else is going to take care of the weeds. In many cases, we don't even recognize what's a bad weed. Passed out pamphlets. **SEE EXHIBIT(ags31a01).** Yellow starthistle took over Oregon, it's pretty much got Idaho and it's sneaking into Montana. When game, horses and livestock walk through these spikes, the results are abscesses and a slow, lingering, agonizing death. We have a lot of weeds around the area we don't recognize. Knapweed was brought to one of the western counties because the bees needed it for the orchard that was going to be there.

Today the weed law reads that if we have a weed district, they spray the roads. There's research to show that some of the herbicides being used are causing some deformities in deer and young boys. People have been concerned enough they're willing to go to court to stop the spraying. At the present time you can get a voluntary agreement with your county to get rid of the weeds. People are putting up no spraying signs, with the threat if you do spray, we're going to sue. I can show you a place of 330 ft. of solid tansy, five feet tall. It's seeding the whole neighborhood.

My bill says if you don't want that area sprayed for health reasons or whatever, get an agreement with the county on how you will take care of those weeds. Some folks defiantly say "I won't do it". The new part says we're going to notify you and give you the thirty days. At the end of that time, we're going to spray the weeds and charge you for it and if you're really defiant, we have the option of fining you from \$200 to \$1,000.

Some folks call me saying you're making us spray. No, we're saying if you don't want to spray, we don't care. Burn them, pull them, we don't care how you get rid of the weeds, just do it. We'll give you full notice and if you don't comply, you can get fined.

Proponents' Testimony:

John Youngberg, Montana Farm Bureau and WIFE, Our city cousins have become our country cousins. Many of those folks are uninformed about pesticides. They may think they're more dangerous than they really are and may not want them sprayed for that reason. Many of them want the trees going all the way to the road, so they put up no spray signs. This bill simply says if you don't want those pesticides used on your entry way or the highway right of way, you have to provide an alternate means of noxious weed control. Noxious weeds cost farmers and ranchers almost as much as taxes in Montana. It is a huge threat, not only to farms and ranches, it's one of the top threats to wildlife. People have to take responsibility for those noxious weeds.

Dave Burch, Jefferson County Weed Coordinator, MWCA, distributed handouts, calendar and brochure. **SEE EXHIBIT(ags31a02).** Some people put up signs without permission of the county weed districts. This bill will help stop that. It's not our intent to make people spray. We just want them come to an agreement with the county weed district, so we know where to spray and where not to. It costs a lot of money to back track 40 miles to spray a 300 ft. patch of weeds when we were just there a few days ago and could have sprayed then. If we know in advance where we can and cannot spray, that's a big plus for us.

Bob Stevens, Montana Grain Growers, We feel the penalty is a little severe and could be reduced a little bit, but support this bill.

John Bloomquist, Montana Stock Growers Assoc., The productivity, environmental and water quality issue, we need to start doing a little bit more. This bill strengthens what the county weed districts are trying to do out there.

Ron DeYong, Montana Farmers Union, lives in a no spray zone. Spotted knapweed got started along the Flathead River about 3 miles from my place and it's moving towards me. I now have some spotted knapweed on the edge of my property that my neighbor and I are trying to control. You can see the progression past the no spray signs. The county is much more timid about spraying the rest of it when they see a bunch of no spray signs. I hope this would encourage them to be a little more thorough.

Brian Kahn, ARTEMIS common ground, Weeds are a threat to everything positive we associate with living in a rural landscape, from agriculture to wildlife.

Opponents' Testimony: None

{Tape : 1; Side : A; Approx. Time Counter : 3.20}

Questions from Committee Members and Responses:

SENATOR HALLIGAN How come the cost of the weed control assessed is not a sufficient penalty? Why did you want to have the misdemeanor penalty along with the assessment?

REP. TREXLER We were talking about how are we going to educate people, how can we possibly get people's attention. We've been doing this for the last 10 - 15 years with no results. Let's put a substantial fine in here so that people will listen.

SENATOR HALLIGAN It's only the person that doesn't provide alternative weed control within the time specified that gets fined?

REP. TREXLER Yes. Alternative weed control could be pulling them, burning them off, whatever. All you have to do is go to your weed control board in your county and set up a program.

SENATOR HALLIGAN There is something that would give the reasonable person who doesn't know a lot about this some understanding of what alternative weed control is?

REP. TREXLER One call to your weed control board and they'll come out, they'll explain it and work with you.

SENATOR HALLIGAN Does this apply to landowners or does it apply to tenants renting property from other persons?

REP. TREXLER The county attorney in my county, after reading it, said it will be the landowner. If the renter does bad, it may go back on the landowner. If there's some way to correct it, that's fine.

SENATOR JERGESON If a tenant has an agreement with a landowner to cooperate with the weed control district and then doesn't do so, the tenant may be, due to the lease agreement, required to expend money to control the weeds but the person who may end up found guilty of a misdemeanor would be the landowner.

REP. TREXLER That may be true, I believe that it's pretty hard to fine the renter in that particular case because it's still the landowner who has the land bordering the county road. I might defer this to Dave.

Dave Burch The county cannot enter into an agreement with a renter or lessee. The Montana Weed Control, the Noxious Weed Act, says it has to be through the landowner.

SENATOR JERGESON If the landowner is a widow living in Florida, how are you going to collect a fine from that person. Can you put a lien on that property?

Dave Burch Yes, and put it on their tax notice.

SENATOR TESTER How are you going to notify the folks of this program if we pass it?

Dave Burch If this bill does pass, we'll have to do a media blitz. People usually call and ask us what they can do for weed control.

SENATOR TESTER People have to know if they are going to be in violation of the law before they're in violation. What if the individual who doesn't want spray uses alternative weed control and the alternative controls don't work?

Dave Burch If it's an approved plan by the weed board, usually those methods will work. Pulling leafy spurge would not be an acceptable control method. Burned or goats grazing on it would be.

SENATOR TESTER Give me an example of the minimally alternative weed control measure that would satisfy the weed district.

Dave Burch if a person had 300 ft. of right-of-way that was full of knapweed, they could pull that twice a year and that would be acceptable.

SENATOR HALLIGAN Normally bills with new criminal penalties don't have effective dates that are immediate. The codes aren't printed until Oct. 1.

REP. TREXLER That was added to the bill downstairs. The only reason we talked about having it come due sooner was so that we didn't go through next summer with the same problem.

SENATOR HALLIGAN You might be able to do a coordinating instruction that has the civil parts of it effective immediately and the rest of it effective Oct. 1.

SENATOR DEVLIN Could you get us some amendments on the date to do that.

REP. TREXLER OK

CHAIRMAN JABS How about the liability of the county? At home we have sugar beets and they're hesitant to spray along the road because they did have a lawsuit claiming they killed the sugar beets. Is there an immunity to the county against suits if they spray without permission?

REP. TREXLER I was told there are statutes governing county liability so if they did, in fact, kill a bunch of sugar beets, there are other liability statutes that will leave them on the hook.

SENATOR TESTER You enter into an agreement with the county to do alternative weed control. Do you then still have to post the land.

REP. TREXLER No, because you already will be in this agreement with the county. They will know where your property is.

SENATOR TESTER In my area they usually have seniors or college freshmen doing this. That puts the onus of liability on the county if the map is read wrong.

REP. TREXLER I suppose there is always that possibility. I doesn't seem reasonable to me, we're saying that maps are accurate.

SENATOR TESTER I don't have a problem with it, I just realized there is more responsibility.

CHAIRMAN JABS Everybody doesn't always know where one property stops and another starts, so I'd think it just about has to be posted. It would put a burden on the part time people who are doing this.

REP. TREXLER Perhaps that will be part of this agreement. If they feel there's any problem along that line, there's no reason they can't tell you to mark it with a yellow sign, whatever.

Closing by Sponsor:

REP. TREXLER There are some correlations of statutes between owner and renter. The landlord is still liable for some of what renters do to neighbors. As far as the notice is concerned to know what's going to get fined, they're going to get the 30 day notice. They still have time to correct it.

{Tape : 1; Side : A; Approx. Time Counter : 3.32}

HEARING ON SB 342

Sponsor: SENATOR DON HARGROVE, SD 16, BELGRADE

Proponents: REPRESENTATIVE KARL OHS
Ralph Peck, Montana Dept. of Agriculture, DNRC,
Governor Racicot
John Bloomquist, Montana Stock Growers
Henry Ficken
Mike Volesky, Conservation District
Rock Ringling, Montana Land Reliance
Art Neill, Nature Conservancy of Montana
John Youngberg, Montana Farm Bureau, WIFE
Sherm Janke, Sierra Club
John Ficken
Lisa Bay
Ron DeYong, Montana Farmers Union
Bob Gilbert, Montana Wool Growers, NW Farm Credit
Services
Bob Stevens, Montana Grain Growers
Jim Hagenbarts
Maynard Smith
Bill Koenig
Steve Snezek
Pat Graham, Mont. Dept. of Fish, Wildlife & Parks
Byron Roberts, Montana Building Ind. Assoc.
Jennifer Dwyer, Big Hole Watershed Comm.
Bill Orsello, Montana Wildlife Federation
Bill Kain, Big Hole River Foundation
Steve Luebeck
Jerry Wells, Trout Unlimited
Andrew McKean, Fishing & Hunting News
Carl Schweitzer, Montana Wood Products
John Crumley, Madison Valley Ranchland Group
Rick Kuntz, SW Mont. Stockmen's Assoc.
Monta Jamison, Montana Agricultural Heritage
Stan Frasier, member, Lewis & Clark County
Planning Board

Opponents: None

Opening Statement by Sponsor:

SENATOR DON HARGROVE, SD 16, The proposal I'm bringing to you today addresses an increasing concern throughout Montana. Family owned agriculture is up against the wall. The market is down, the farmer/rancher is aging, the operations are short on cash flow and selling for whatever purpose is often the only option the farmer/rancher has, even when the family would like to keep the operation going as a family farm.

This bill is about options. It's also about private property rights, ownership and a way of life. It provides for allowing the landowners to establish an agricultural easement thereby receiving immediate financial compensation with continued productivity, and maybe more importantly, continued ownership and operation of the land.

We've been meeting for the last two years on a regular and sometimes an ad hoc basis. We've had representatives from ag groups, landowners, conservation groups, legislators, environmental groups, local government, and a few others. In summary, the bill itself authorizes a farmer or rancher to apply to establish an agricultural easement on his or her land.

The act creates a commission to approve and fund the acquisition of the easements in accordance with core values and criteria established in the act. It's entirely voluntary, to give a choice to those folks who really haven't had a choice. The landowner makes all the important decisions and decides who will be the easement holder. He can negotiate the terms. The holder of the easement will be somebody who does that routinely, like the Land Reliance, Nature Conservancy, etc., and it will be administered in the manner that they are usually and routinely administered. The holder will act also as the ranchers staff to provide them with all the help they need to get it done. The easements may be permanent or term easements and will reflect the market value. There is money in the budget, you have a fiscal note, and we expect to be able to leverage that.

You'll see in the bill we have core values listed, those things we feel are most important. There are three things that are essential and the decisions the commission will make. There are criteria guidance for the commission and there's composition of the commission. I guarantee you, these are the result of many hours of debate, negotiation and giving. We think it's doing the job it's supposed to do which is keeping the family farm operational.

{Tape : 1; Side : A; Approx. Time Counter : 3.37}

Proponents' Testimony:

REP. KARL OHS, HD 33, A group of interested people got together during the interim and worked quite hard to build a consensus around this issue. I think for the first time you saw the agricultural community and the conservation community come together for the basic good of both. Open space and farm land is valuable, not only for agriculture but for the wildlife and Montana.

On the steering committee that put this together we had Montana Farmers Union, Montana Stock Growers, Montana Assoc. of Realtors, conservation districts, Land Reliance, Nature Conservancy, Wood Products, Gallatin Valley Land Trust, and Montana Farm Bureau. The provisions in here were tenuous and they worked down to the exact language everybody could live with.

It is a tool that ranchers can use to preserve their property if they so choose as a family, in the ranching business. Keep in mind it doesn't necessarily mean there would be no development, but limited development could take place if it was prearranged. Selected house sites for family members could be part of the program if it was worked out that way.

This is strictly willing buyer, willing seller. Nobody is forcing anything on anybody, it's incentive based conservation of ranch land. After working on it for nearly 2 years I think we have an agreement that's extraordinary and I urge your serious consideration.

Ralph Peck, Montana Dept. of Agriculture, DNRC, Governor Racicot As indicated, lot of effort has been put into this legislation. It was a concentrated effort by all of those involved. We'd like to thank **SENATOR HARGROVE** and **REP. OHS** for all the work they've provided. They've outlined the bill very well. It is part of the Governor's Executive Budget Proposal and we stand in support of it.

John Bloomquist, Montana Stock Growers endorsed this concept in December. Stock growers have been involved in the issue of conservation easements for some time. Conservation easements are a tool, not a panacea. Most conservation easement programs that a rancher or farmer could be involved in generally involve donated conservation easements. Those don't provide the financial flexibility a program like this could.

There is a limited amount of dollars out there in the realm of acquired conservation easements. This program offers a unique opportunity to try to take some monies and leverage them with private monies to build a program that could have some major benefit.

One of the things that's missing from some of the present day programs is the benefit that considers elements that are very important to agriculture. It also discusses specifically the idea of term easements, which I think a program like this could focus on and not so much perpetual easements. Term easements could preserve open space and habitat and provide a benefit to agriculture.

One consideration that came up late in this process was the termination date. It is a pilot project. The commission would have to be selected and write rules. I would suggest the sunset date be extended a couple years in order to let this program get off the ground and realize some benefit before termination to see if it's an effective program or not.

Henry Ficken, Passed out letter from neighbor. **SEE EXHIBIT(ags31a03)**.

Read written testimony. **SEE EXHIBIT(ags31a04)**.

Mike Volesky, Montana Association of Conservation Districts, Organization officials supported **SB 342** at annual meeting in December. We all know Montana's rural agricultural heritage and rural character is changing. They supported this program with the awareness that there's quite a bit of funding made available from the federal level that Montana is not eligible for because it has no similar program in place. It is another tool in the box.

{Tape : 1; Side : B; Approx. Time Counter : 3.52}

Rock Ringling, Montana Land Alliance, We are a private, non-profit land trust operating in Montana. We are also the largest agricultural land trust in the United States. We have offices in Helena, Big Fork and Billings. On behalf of our Board of Directors, I would like to state our support of **SB 342** as introduced. We initially were concerned that the commission would be in direct competition with Montana Land Alliance and private organizations and that the amount of money proposed was not even close to the amount that demand would indicate was needed. By working with the steering committee, our first concern has been eliminated. Our second concern, I believe, is still valid, but we understand there's a trust looking at Montana, we have to start somewhere.

We're not making any more agricultural ground. This program, combined with other tools for private land conservation, will keep more of Montana's ag land in production. These lands, while providing economic income for the families, also provide the greatest share of wildlife habitat in Montana. These lands

provide the open space most individuals acquaint with the west and the reasons that many people come to visit this state. These lands also provide a stable tax base for our counties and most importantly, represent the base for a custom and culture that in many areas of Montana has already disappeared.

I agree with John Bloomquist that it would be nice to extend the sunset date on this legislation. If this program passes, we're going to have to go to both US Senators and Congressmen to get some of those federal monies allocated towards this state. It's going to take us some time to do that. Last year the value of the donated conservation easements that came to the Montana Land Alliance were worth just over 38 million dollars. That's a very conservative estimate. We need those federal-flow through dollars to make this work. **(TURN TAPE)**

Art Neill, Montana Nature Conservancy, read written testimony.
SEE EXHIBIT (ags31a05).

John Youngberg, Montana Farm Bureau, Women Involved in Farm Economics, I was hesitant about conservation easements early in this program. We had a number of members who worked on the committee on this. They came to our convention with a resolution to support this and it passed overwhelmingly.

In the past, farmers and ranchers, particularly in high growth areas, had one option. Their retirement program was to subdivide their land. That would provide them with enough income for later on. This gives them another opportunity to keep that land in agriculture. I agree with Mr. Bloomquist about the sunset provision.

Sherm Janke, Volunteer Chairperson, Montana Chapter of Sierra Club, Every day about 7,000 acres of agricultural land in the United States is converted to non-ag uses. That's about two and a half million acres per year. That's very poor stewardship of this precious resource. The Sierra Club has been concerned for many years about agricultural policy in the United States and the steady erosion of the family based and family operated farm and ranch.

We believe that in the 21st century, two commodities are going to become very important. One is fresh water and the second is agricultural land. As the world, which is ever more populous, endeavors to feed itself, it's very simple. By adopting a favorable recommendation on this bill, you can do something about that. You can leave a legacy that honors Montana's heritage and helps preserve the family farm. I have long thought the conservation community and the agriculture community, on the vast

majority of issues, should be and could be making common cause. We have a common idea of stewardship. This is one way to bring it about.

I would like to say something personal. My wife and I acquired some forested land in Michigan back in the '60s. We have just put that in conservation easement, which we were able to do because we bought the land very cheaply. I can speak from some experience about conservation easements, having done it. We are urging a do pass on this legislation.

John Ficken, Kalispell farmer, It's no secret that agriculture is in a crisis. Depressed prices and vanishing markets are destroying Montana's agricultural industry. An alarming number of farms and ranches will face bankruptcy in the next few years if nothing is to help the situation. As farm and ranch lands go up for sale, only subdividers or land developers can afford to buy the land. **SB 342** offers a mechanism necessary to protect our farm and ranchlands, while giving agriculture a boost to help survive the economic crisis. I urge you to vote in favor of this bill. Passed out handout. **SEE EXHIBIT (ags31a06)**.

Lisa Bay, ranches with husband in Wolf Creek, Montana and placed conservation easement on their ranch in 1996 through Fish, Wildlife & Parks conservation easement program. In the preamble to this bill, there's a section that says part of the purpose of this bill is to secure the long term conservation and productive use of agricultural lands. What I find upon reading the bill is that concept of protecting the productive use of the land doesn't follow through. I know there's one gentleman here who asked that you don't consider any amendments to this bill because it might erode all the work that went into it, but I can't see that the concept under that clause would run into the face of what's here already.

Section 5, part 2a, lists the core values of this legislation. Under a, b and c, one of the core values is the conservation of family farms, ranches and forest lands. I would like you to consider adding in "and their long term productive values" and under c, conservation of native wildlife species, "and their long term productive habitat". I suggest this because you may have a very conscientious landowner who comes to you with a proposal for conservation easement who then is forced to either overstock or sell that property and sells to somebody who does not have in mind the best productive use of that land. Since public dollars can be used to buy this land and the implicit assumption there is that land would be protected by that landowner who received the money, I think we need to add something in the rule making that

protects the long term productivity of these conservation easement purchases.

Ron DeYong, Montana Farmers Union, I would like to run through a scenario so you can see what options a farmer might have. He lives close to a growing city that's putting development pressure on his land. This farmer is experiencing a negative cash flow so he decides to sell. He has two options right now, he can sell his place to a farmer or he can sell to a developer for significantly more. If he sells to the developer, you lose the farmer and the open space. With this bill, he has extra options. A renewable term easement will perhaps turn his cash flow around so he remains on the land. You still have the farmer and you still have the open space. He might decide he wants to sell a permanent agriculture easement. That guarantees you're going to have the open space. Hopefully, money from the easement and the money he gets from selling to a farmer would equal the amount he would get by selling to a developer.

Bob Gilbert, Montana Wool Growers, NW Farm Credit Services, both associations stand in support of this bill.

Bob Stephens, Montana Grain Growers, in support of this bill.

{Tape : 1; Side : B; Approx. Time Counter : 4.08}

Jim Higinbart, SW Stock Growers, Our family has been ranching in Big Sky country since the 1860's, much like many of the other ranchers in Montana and we did it because we love the soil and we love what we're doing. We love to be good stewards. Because of the small business climate, the bureaucratic red tape makes it very difficult for 1 or 2 people in an operation to cut all the red tape to make things work. The environmental community has been away from the land too long. They really don't understand what's going on out here. They're coming here with all good intent to try to help us out, but it's making it very difficult for us to manage all the resources we manage to BLM, the Forest Service, the state, and all the fee land. We're the only ones that manage it all and pull it together. We're finding it very difficult to do this. It's very important for each one of us that the equity our grandfathers and fathers passed on to us must not erode. As a responsibility to our families, we cannot allow that equity to erode and turn our children away from this land. It is just a beginning, but **SB 342** is going to have to happen if we're going to keep Montana rural and open. Just as we use livestock to keep the range resource healthy, society is going to have to use us to keep the resource open and rural for our children, your children, and our childrens' children.

Maynard Smith, Rancher, I'm Jim's neighbor. As **SENATOR DEVLIN** knows, we kept my son and other children on the land, around cows and land and dirt all the time and they didn't know any better. These young ones are around computers and it's different. I hope we'll be able to keep young people there.

Bill Koenig, Passed out testimony. **SEE EXHIBIT(ags31a07).** The thing I particularly like about this bill is that it gives the State of Montana the most bang for their buck.

Steve Snezek, Montana Assoc. of Realtors, we're intimately familiar with agriculture's importance to Montana's past, present and future. We know how important ag land is to the property values of the lands we sell. I'm struck by one thing here today, we can't save agriculture by stopping development. An integral part of saving agriculture is retaining private property rights. We support this bill because nobody is going to twist anybody's arm to put an easement on their land.

I want to key in four major provisions that are crucial to our support. First is the funding source. This program benefits all of Montana so all Montana should pay for the program. Thus, General Fund is the appropriate source of funding. Second, we support term or in perpetuity easements. We don't know what our land use needs are going to be in 20, 50, 100 years from now, but allowing the option of term easements is a very positive provision. Third, we support the commission makeup and the super majority vote. The membership of the commission is a broad diverse group of people. Including a real estate or building industry associate professional broadens the expertise positively. The super majority vote provision insures that no side will be overrun in the decision making process. Fourth, we support the four year sunset on this program. We don't know how well this program is going to work or if it will work. Sunsetting the program and letting the legislature reauthorize it in four years will insure legislative oversight and help us determine the long term health of this program.

Pat Graham, Montana Dept. of Fish, Wildlife & Parks, Distributed written testimony. **SEE EXHIBIT(ags31a08).** There's clearly an interest and demand by landowners for programs like this. Despite the fact that we've been in easements for just over a decade, we've only been able to put 150,000 acres into conservation easements. If Montana were a 5 gal. bucket of water, we'd have less than a thimble full of water. It's a collection of programs like this, both in the private sector, our program and the program you're considering to day that we hope can make a difference.

Byron Roberts, Montana Building Industry Assoc. Our association had the opportunity to work with the group over the last 2 years in developing this proposal. It preserves private property rights and preservation of open space, which are both commendable goals. We especially like the provision for term easements that this bill offers.

Jennifer Dwyer, Big Hole Watershed Committee is a consensus driven entity that represents stake holders throughout the basin, including family ranchers, sportsmen, conservationists and municipalities. Since 1995 the Big Hole Watershed Committee has worked closely with the Big Hole River Foundation, FWP, Conservation Districts and other agencies. The Watershed Committee fully supports **SB 342**. It recognizes the relationship between agricultural production and conservation. It supports the bill because it recognizes that by maintaining family ranching activities across the landscape we will also be maintaining ecological health in the watershed.

Bill Orsello, Montana Wildlife Federation, Our support for open space, preservation and rural agriculture is strong. Our support for this bill as written is weak. We entered into the consensus process two years ago. Montana Wildlife Federation and agriculture have been partners throughout the history of restoring and maintaining wildlife. Montana Wildlife continues to support ag programs that keep families on the land.

This act strains that relationship. Montana Wildlife Federation put our core values on the table for consideration. We had three concerns. First was a prohibition on wildlife privatization on lands given easements in the program, such as exclusive outfitting, private hunt and fish clubs and fee hunting. Second was a prohibition on game farms on land under these easements. Third was only a consideration of access for public as a part of the easement elected by the landowner. Our core values were continuously rejected. The agricultural community said they would walk away if these values were integrated into the program. In spite of this, we come to you today because we believe in open space and rural agriculture.

We would offer three amendments to the legislation we think would strengthen it and provide an approach that includes all segments of our society. **SEE EXHIBIT (ags31a09)**. The agriculturists I know in Montana are some of the hardest working, honest and fairest minded people I know. The people I know in the agricultural community aren't looking for an entitlement, they're for something that benefits all of us. This bill has discounted the sportsmen and fishermen.

Bill Kain, Big Hole River Foundation is a private foundation of approximately 500 members in the Big Hole and throughout the nation that is dedicated to preserving the natural state of the Big Hole River and the watershed lands. We support this bill in the form that has been presented, without amendments.

Steve Luebeck, George Grant Chapter of Trout Unlimited has voted unanimously to support **SB 342**. Maintaining family based agriculture and its related benefit of open space will help preserve Montana's world class fisheries. Too often in Montana we see small family ranches subdivided as the only means of economic survival. As subdivision occurs, the most sought after pieces of land are the areas directly adjacent to water bodies. Keeping family farms and ranches intact is in the best interest of Montana's world class fisheries. We are far more interested in the perpetual easement aspect than the term easement aspect.

Jerry Wells, Montana Council of Trout Unlimited, We've reached the conclusion that retaining land in family owned agriculture is in the best interest of wild trout and trout fishing. We've seen the alternatives and so have you. There are many fisheries on these properties that we've had the opportunity to enjoy. There are fishery values on site and offsite. The offsite values are incredibly important to the river fisheries of this state. There are spring creeks and small streams that fish from the main stem rivers spawn in. The fisheries and the rivers are dependent on these streams staying in open space and in the kind of management that has created what we have today. This program has an opportunity of leveraging a great deal of money. The National Resource and Conservation Service program you've heard about is a natural fit and can bring a great deal more money into this program. The FWP program can also be pulled into it. We would hope that perpetual easements would be given priority in the program.

Andrew McKean, I give qualified support for **SB 342**. The most lasting legacy of this bill is conservation of wildlife habitat. Small family farms and ranches are not only the bedrock of Montana's economy and rural culture but contain much of our river bottom and riparian habitat used by big game, upland birds, and a multitude of nongame species. It's typically accessible, level and close to town, which makes it ripe for development. We've seen what happens to core wildlife habitat at the hands of unfettered development.

I told you my support is qualified. I can live without a provision requiring public access in this bill, thanks to the success of Block Management and other hunter friendly easements that require access. Small family farms have been among the most

constant friends of Montana hunters. For that reason I think it's appropriate sportsmen extend a hand in support of conservation easement that specifically target family farms and not insist on public access. I would be unhappy to see outfitters profiting from the program that's partially funded by public funds and intended to preserve families and their farms, rural economies and wild habitat.

Carl Schweitzer, Montana Wood Products Assoc was part of the coalition that came up with this bill. I have a letter from Montana Forest Owners Association, they worked very closely on this also. **SEE EXHIBIT (ags31a10)**. We ask you to support **SB 342**.

John Crumley, Madison Valley Ranchlands Group is a grassroots organization of small landowners working in the Madison watershed. One of our programs is exactly what you have in front of you today. We have a large number of absentee owners in our valley that already have conservation easements on their land. They are looking at this bill to help them put money into the state to help preserve the open spaces that are around their property. One of our members came to me and said even if this passes, it isn't going to be in time for him.

Rick Kuntz, SW Montana Stockmens Association, We were the group that instigated the resolution that Mr. Bloomquist referred to earlier. We are in strong support of **SB 342** as written. Montana is referred to as the last best place. People are starting to realize a significant part of that last best place lies in the hands of our agricultural producers and the way they have taken care of the land and provided wildlife habitat while producing food and fiber for the nation and the world. I speak as the 4th generation and the father of the 5th generation that I hope will have an opportunity to stay on that land. So many people have done a good job of taking care of that land, they see their equity continue to build but it doesn't help their cash flow. Here's a tool for some people to take a look at some options they may have to keep that land in productive agriculture.

Brian Kahn, Artemis Common Ground, commented on the process that created **SB 342**. For nearly two years, meeting monthly and doing a lot of work between meetings, agriculture, real estate, timber owners, multiple conversationists, building industry, land trust, state and local agencies and political leaders worked hard to create a program based on their shared interests. We all shared a commitment to the productivity of the land. To translate that general shared interest into specifics of a program and then into legislative language was not an easy task. Every section, every provision of this bill has been hammered out by the full spectrum of interests on our steering committee. For that reason,

substantive amendments which could unravel our working partnership should not be accepted.

Mona Jamison, Montana Agricultural Heritage, addressed a few key issues of the bill. The super majority vote, 9-3, was a consensus. Any project must be approved by 9 of the 12 members, whether 9 members show up or 11 members show up. If 12 members show up and 9 vote for and 3 against, it's dead. That's to bring through the commitment of working together you've seen reflected in this piece of legislation. We're very proud of that measure.

The one amendment we probably could support is the one raised by Mr. Bloomquist. The termination date on this pilot project is 2003. By the time the appointments are made, and the rules adopted, we will have lost a year, maybe even 15 months. Two more years would give more folks an opportunity to access the program. It will give the commission more time and the non-profit easement holder time to get more money into the program. Leveraging of the seed money this provides is so important.

This bill reflects three core values, conservation of family farms, ranches and forest lands, conservation of rural landscapes and conservation of native wild species and their habitat. We're recognizing the core values that are significant to a successful program. We appreciate what this agricultural land offers.

(CHANGED TAPE, Testimony missed).

As has been pointed out by many steering committee attendees, this bill is the product of hard work. I'd like to ask your support of the most exciting piece of legislation before the legislature.

Stan Frasier, is a member of Lewis & Clark County Planning Board, One the thing we lack when we review subdivisions is the ability to deny them because Lewis & Clark County, like most counties in the state, doesn't have county wide zoning. We should have rural zoning. I see that as a failure of state and county government. Lewis & Clark County has been working on a county wide plan for years and hasn't got it done yet.

Another thing that's lacking in this state is a bill prohibiting stream side construction. We should have a stream side setback so people can't build houses within 300 ft. of the stream. Just want to remind you that the loss of agriculture land is a symptom, the cause is population growth. Until we deal with population growth, we'll have to continue to deal with this sort of problem.

{Tape : 2; Side : A; Approx. Time Counter : 4.38}

Opponents' Testimony: None

Questions from Committee Members and Responses:

SENATOR MESAROS Pages 7 and 8 briefly touch on temporary officers and other officers, employees excepted. How did you arrive at that list.

SENATOR HARGROVE This is something that's another law, part of chapter 18, it's just the way people are treated when you do commissions, it really doesn't have anything to do with the people that are appointed here.

Mona Jamison It's exempt from the pay plan and it's temporary because it has an immediate effective date and then it has to extend beyond October 1, that's why the temporary and the permanent, it has to do with the exemption from the pay plan for the one position, the executive director.

SENATOR DEVLIN A person comes in with a statement outlining his duty, we've heard mentioned something about public management. Do you see anything like that in this bill. Micro management.

SENATOR HARGROVE Quite the opposite. It's totally voluntary and everybody's there to help the landowner, farmer/rancher, do what he wants. He can walk away from it at any time. The easement holder will help him out, tell him what he can do, they'll probably type his letters. The commission provided them with guidance, the things they have to think about and they have full freedom to make decisions.

SENATOR JERGESON Do you have the mechanics in place for somebody who would, for maybe tax purposes, want to have their payments spread over a number of years. In Appropriations **HB 2** it's only a period of 2 years.

SENATOR HARGROVE I believe that's entirely possible. Right now it's a one biennium appropriation. We talked about the freedom to farm, federal farm land protection programs, we expect to leverage this. It is my strong hope there will be a continual flow of money from this seed money. I really hope the state will find itself able to continue to provide that money. The landowner can negotiate whatever he can get. I know of nothing in this legislation to prohibit them from doing that over a period of time.

SENATOR BECK I've been hearing from a lot of people in this room that this might be their salvation. Do you honestly think there's going to be enough money in this program to salvage the

problems of agriculture at the present time? If I sold an agricultural easement just to relieve my debt on my property, I might be in the same boat ten years from now. Do you think there will be enough money in this program to make this viable.

SENATOR HARGROVE The money in there is a minimum. Again, the leveraging is very important. It's \$4 million, not much when we're talking the whole State of Montana. But you have to start somewhere. It's not going to be the salvation of very many people, but the idea could be.

SENATOR BECK Montana Wildlife Federation offered a couple of amendments. I don't know whether we want to mix them with this bill. If I sold an agriculture easement, that doesn't preclude me from selling a Fish and Wildlife easement on the same piece of ground to accomplish the flip side of this.

SENATOR HARGROVE A lot of the testimony has considered a conservation easement and an agricultural easement as the same thing. They're different. A conservation easement hasn't always been popular with farmers and ranchers. An agricultural easement is when you have the easement specifically for the purpose of preserving family farms and agriculture. Access can be a part of an easement. It never has to be and it's important in this bill that access has value. Access, game farms and fee for hunting are very important to some people. Those are amendments that I would resist. The consensus process stopped as a result of not being able to make full accommodation to those things. But those folks would still come in and said they're proponents to the basic idea of the bill.

SENATOR HALLIGAN We have \$4 million dollars in the General Fund. So other programs are going to be set aside so we can do this. We're giving \$4 million dollars away and we have nobody on the commission to represent the state's interest. I wish we could do that for education, K through 12, higher education, give them the money, no strings. I'm signing on this bill but I have to address some problems I'm seeing. What's the state getting out of this? We're going to preserve some agricultural land and that's important, establish some habitat potentially and some other areas that might be sensitive for various plants, etc. When I go home and the sportsmen ask what access did you guarantee us on this bill, well, none. Are you going to guarantee I'll have some access so they won't sell it to the private outfitters? No, I can't. I don't understand how a consensus process could put together something that didn't include language on access so our people can do some hunting and fishing on that property. It's not a major intrusion on that

conservation easement if we're spending \$4 million dollars out of the general fund.

SENATOR HARGROVE That's no different than what the land is now, as far as access, game farms. The word's preserve and that's what we're trying to do. I'd probably sign the bill if we could do this for education. The state is left out of it intentionally. We have an executive director who will be the only paid person and we'll get a little administrative support from DNRC. There 's a joint hiring of the director between the commission and the Dept. The state control has been left out of it intentionally so that the commission will have the freedom to operate within the core values of criteria.

One of the most important things that addresses this issue of state control and access is the composition of the commission and the super majority. That provides for the interest, we think of the major caucus groups that are interested in the state, three people out of twelve can stop something. We have some people who basically have heartburn with this and are still willing to come in and say we like it and we'll keep pushing our interests. I know they will and they may be able to stop some decisions or be the critical ones to make it go.

SENATOR HALLIGAN Speaker Mercer is livid with the fact the Democrats will not bust the trust. Minority rule never works in a democracy. Giving 3 people the ability to veto something is a major road block to progress. I can't understand why a consensus group would throw that in there.

SENATOR HARGROVE The values expressed and the objectives of this proposal are so broadly supported that people who are concerned about some of these still come in and support the bill. We think the support will allow that to move forward in the process and workings of the commission.

SENATOR TESTER You talked about leveraging money. What I'm interested in knowing is, is this \$2 million a year? How do you leverage money. Is it going to be a public, private, non-profit, government situation?

SENATOR HARGROVE There are foundations and there is private money. I've had calls recently from an outfit in Connecticut that collects money from a variety of sources, non-public money and they provide it to things like this. There's an outfit in Wyoming that does the same thing. There are those sorts of funds out there. Montana doesn't really have a vehicle. These things are done and all of these groups that we've talked about have been doing them. This provides the vehicle. The Federal

Farmland Protection Program, that's a big one. The administration has \$180 million dollars they were going to give for just this sort of thing. Montana will be left out without this, probably, because there isn't a state organization to accept funds.

SENATOR TESTER From a Montana Land Reliance standpoint, do you intend on giving this commission the strings to spend your money.

Rock Ringling Am I going to turn over the funds of the Montana Land Alliance to this commission? No.

SENATOR TESTER How do you envision this working, then.

Rock Ringling We need a tool. This isn't going to cure the problems of agriculture. \$1.50 cows and steer calves might help that, \$7 wheat might help that, this isn't going to do it.

At Montana Land Alliance we get at least a call and sometimes two calls a day from farm/ranch families that are looking to place conservation easements on their property and they need the money. They may not need full value, but they may need some debt retirement, retire a parent, etc. We see this as a tool. We can leverage private money, some foundation money, private individuals, that we can match with the money we've raised internally within our organization. It's a tool where we can leverage money into this program. Hopefully we'll be able to purchase conservation easements on specific ranches. This gives me a place to raise money into.

Let's use the Wilsall - Clyde Park area. Three presidents of major companies bought ranches because they like the open space and community they moved into. A neighbor comes across and says the bank's on my butt, I need to do something. They've been trying to figure out a way to participate in that. The rules are laid up now, they can't really do that. But they can make a donation into this to purchase conservation easements and preserve a lot of the values that they bought those properties for.

SENATOR HOLDEN Since I'm a rancher in eastern Montana, I've never been around these easements or barely heard about them except through some trade magazines. I'm not quite sure exactly how you take \$2 million dollars of taxpayers money and start buying up people's private property for agriculture.

Mona Jamison The rancher or farmer will first meet with the qualified easement holder and they'll put together a deal, come to the commission and ask that part of the acquisition price be funded by these funds. You heard Mr. Ringling give an example of leveraging.

This money will not fund very many agricultural easements. The easement holder works with the applicant farmer before they even go to the commission and make the application. They help find some of the other sources. The application actually says you have to talk about compensation, how much money you're asking from the commission and how much you've leveraged from other sources that those non-profit entities will have helped you seek out.

SENATOR HOLDEN If you take the funding out of the bill, wouldn't these organizations come to the executive director and work these deals out. You're talking about an outside non-profit organization trying to buy private property rights in the way of an agricultural easement. Why do we even need to be throwing in taxpayer dollars to do that?

Mona Jamison In terms of receiving some of the federal dollars we need a state vehicle, and also in order to be the conduit of those particular funds. There has to be a state infrastructure in place. We do need this as opposed to the existing program. The way these organizations work now, they're totally independent of the state so are not able to be a conduit of those federal funds, which have to come through a state agency. This is the way the state says to the federal government, we want some of our taxpayer dollars back to help some of our taxpayers.

SENATOR HOLDEN How come the fiscal note doesn't indicate that there are federal matching dollars to our \$2 million per year.

Mona Jamison We could ask for an amended fiscal note. Clearly all the pertinent information was not provided to the budget office when they put this together. They're just as good as the information they receive.

CHAIRMAN JABS The government put up fourteen and a half million dollars, and there are 18 states that picked that up. There are only four from the western part, the rest are from the east. I'm guessing there's no money available at this time but maybe they'll put more money later.

Mike Volesky It does make mention of this in the technical note. You have to make application for those federal dollars much like you do on the state level and there's no guarantee you would get

that. I would hope the good projects would rise to the top and be eligible for consideration. Any state which just brought a program on line is going to do well initially, because you have a new program and they want to get as many states involved as possible to ensure the longevity of the program. Relatively speaking, only a few states have had a program in place and have been eligible.

SENATOR DEVLIN What have the other states put up for money to be eligible. Could you elaborate on how much they put up or how many states, is that available.

Mike Volesky Yes, they have. I would be happy to look that up for you.

SENATOR DEVLIN Is the money available from Washington?

Mike Volesky Thirty five million was available last year and went to about 17 or 18 states for a number of different projects.

SENATOR DEVLIN About two million per state.

Mike Volesky They each have their own program and all their own sources of matching funding, whether private dollars or whatever, those are the ones that were eligible, competed and got funded.

CHAIRMAN JABS Under this program, U.S. government enters into agreement with states, tribes and local governments to support their effort to protect farmland through the purchase of easements. U.S. Government provides up to 50% of the cost of purchasing these easements. 18 states have put in for this.

SENATOR BECK In the President's budget, if he has any money that's earmarked for this program in the coming fiscal year, do they require a state match for these federal funds.

SENATOR HALLIGAN Could somebody from the consensus group talk about why the group rejected the outfitter issue.

Bryan Kahn The three issues were all raised by the Wildlife Federation. This bill was about was maintaining quality land stewardship. That was the focal point that brought people together. They weren't denigrating the other important issues that people might want to bring to the table. The consensus process broke down on these questions. Currently landowners have the right to outfit, the right to sell a trespass fee. We didn't feel it was right to require that current ability be given up when what they're selling is a fair market transaction for development rights. The feeling was there are important public

values that are being protected, open space, wildlife habitat, and the rural tradition. There is specific provision in the bill that access can be purchased. It can't be required without compensation.

SENATOR HALLIGAN Does the dynamic of having public dollars involved in the purchasing have anything to do with your discussion?

Bryan Kahn Absolutely. Part of the questions were the source of the public dollars. Fish, Wildlife & Parks has a program that requires public access to be part of the deal. The expectation is these farms will be seed money in state funds, federal money, which has no provisions for public access or restriction on private outfitters, and a lot of leveraged private resources that have no public access component built in. That judgment call was made by the overwhelming majority of the interests at the table.

SENATOR HALLIGAN Why wouldn't you want the ability to go to the person that really needs it and wants to keep that land and ag ethic, more than you'd want to go with somebody who potentially is going to lease it out to an outfitter.

Bryan Kahn You well might and we think the commission is well qualified to make that judgment. Commission has the discretion to make that judgment.

{Tape : 2; Side : A; Approx. Time Counter : 5.12}

Closing by Sponsor:

SENATOR HARGROVE Nothing is prohibited. Anything can be negotiated and anything can be done. It's not a lot of money. I suspect there'll be a more willing sellers than there are willing buyers. Those hard choices ought to be pretty easy to make.

Matching funds is what we're talking about, at least in terms of federal money. There's a lot of interest at the federal level, just like in Montana. Interest is going to continue to be there. These ideas are not new but the enthusiasm for them and the great cooperation from widely diversified people and organizations is pretty new.

I've heard a piece of land described as a bundle of pick up sticks. Those sticks are rights and you have all kinds, water rights, mineral rights, forest rights, hunting rights, access rights and development rights. We're only talking about

affecting one of those rights, development. That's not even total, you could negotiate some limited development too.

The amendment by Lisa Bay sounds pretty good to me but I would have reservations because of the coalition of consensus. I'm not sure I see where it really adds something to the coalition we've had and really fought long and hard for. The idea is good. Someone mentioned rural zoning and top down control. That's definitely not what we had mind. This meant providing an option.

There are states back east where the government says this is the way it's going to be, top down zoning, county wide zoning, even practically state wide. This is freedom of choice and this is Montana. The state isn't going to own anything, buy any land, or even going to own the easement. People already in the business of holding easements are the ones who will do that.

The other amendment, I hope we get more money from the state. I would think 2005, maybe 8 or 10 years, would be a more realistic time to visit it again. If the thing starts dying of its own weight, the enthusiasm is there. If it's dead the legislature can terminate it. I think it ought to be looked at again.

This is just a small step towards a united goal, one we've seen a lot of across the lines support for. I really applaud the people that have been willing to come and, in some cases, grit their teeth and in other cases, cheer as they step up to the challenge that's ahead of us. I think this step is absolutely necessary.

{Tape : 2; Side : A; Approx. Time Counter : 5.17}

SENATOR JERGESON made the motion that the committee draft a joint resolution supportive of petition being circulated by producers around the state.

A joint resolution to our Congressional Delegation supporting petition.

ADJOURNMENT

Adjournment: 5:19 P.M.

SEN. REINY JABS, Chairman

CAROL MASOLO, Secretary

RJ/CM

EXHIBIT (ags31aad)